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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/692,007	10/19/2000	Stephen P. DeOrnellas	TEGL1082US1 SRM	7175
23910	7590	11/26/2003	EXAMINER	
FLIESLER DUBB MEYER & LOVEJOY, LLP FOUR EMBARCADERO CENTER SUITE 400 SAN FRANCISCO, CA 94111			UMEZ ERONINI, LYNETTE T	
			ART UNIT	PAPER NUMBER
			1765	

DATE MAILED: 11/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/692,007

Applicant(s)

DEORNELLAS ET AL.

Examiner

Lynette T. Umez-Eronini

Art Unit

1765

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 November 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 10-49.

Claim(s) withdrawn from consideration: 1-9.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

NADINE G. NORTON
SUPERVISOR PRIMARY EXAMINER



Continuation of 2. NOTE: In (New) Claim 50, "The method of claim 10, wherein the hard mask is deposited over the layer to be etched without being deposited on side walls of the layer to be etched" and In (New) Claim 51, "The method of claim 11, further comprising the step of: oxidizing the hard mask either prior to or during heating by exposing the hard mask to a stream of oxidizing gas" raise new issues that would require further consideration.

Continuation of 5. does NOT place the application in condition for allowance because:

applicant's argument that the motivation for combining Fullowan with Moslehi's method of providing energy to the reactor would not be obvious due to increase processing time and which differs from the Examiner's reason for combining the reference is unpersuasive, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See Ex parte Obiaya, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985); and

applicant's argument that neither Fullowan nor Moslehi are believed to disclose introducing a stream of oxidizing gas to enhance the oxidation process is unpersuasive because Fullowan teaches, masking a tungsten layer with a titanium mask (column 2, lines 39-40), etching the mask workpiece to selectively remove the unmasked tungsten (column 2, lines 55-57) and by reactive ion etching using CF₄/O₂ (same as applicant's stream of oxidizing gas) mixture (column 2, lines 57-68). Since Fullowan uses the same etchants in exposing the same mask materials as those of the present invention, then using Fullowan's method of exposing the hard mask layer with the etchant, in the same manner as the claimed invention would inherently result to increase the oxidation rate of the hard mask to slow erosion.